

Assembly Bill 2818 (Pacheco)
Disqualifying campaign contributions

Version: Amended 3/26/04

Status: Passed Assembly Elections, to Appropriations

Executive Summary

Under the Levine Act (Government Code section 84308), members of appointed boards and commissions are disqualified from participating in decisions involving contributors of \$250 or more in the previous 12 months, and are prohibited from soliciting or accepting contributions from persons who have come before them within the previous three months. This bill requires the Commission to adjust the \$250 threshold by January 1, 2005, to reflect changes in the Consumer Price Index (CPI) since the 1983 effective date of the section, and to make similar CPI adjustments biennially thereafter.

Recommendation

The Chairman's Subcommittee on Legislation voted to oppose this bill in advance of its first policy committee hearing. Staff seeks ratification of that position. The subcommittee's rationale was that section 84308 is unique among limits and thresholds in the Act in that it is limited to instances in which the maker of a contribution is before the recipient of that contribution asking for specific action on a governmental decision. Because the section applies *only* where a *quid pro quo* is apparent, the subcommittee felt that indexing the threshold would be inappropriate.

Background

The "Levine Act" was passed in 1982, adding section 84308, following a series of articles in the Los Angeles Times regarding a Los Angeles City Councilman who was using his position on the California Coastal Commission to extract contributions from applicants before the Commission. Initially the bill applied only to quasi-judicial proceedings, but was amended in 1984 to include any proceeding before an appointive body involving a license, permit or other entitlement for use. The section applies to all agencies except the judicial branch, constitutional officers, the Legislature and the Board of Equalization. The section also specifically exempts local governmental agencies whose members are directly elected by the voters, except when they are acting as voting members of another agency. A few examples of agencies to which section 84308 applies would be planning commissions, local agency formation commissions, and transportation commissions.

Section 84308 prohibits:

- An officer from accepting, soliciting or directing a contribution of more than \$250 on behalf of any committee from any applicant in, or subject, supporter or opponent of, a proceeding involving a license, permit or other entitlement for use while the matter is pending and for a period of three months following the final decision.
- An officer who has received such a contribution in the previous 12 months from making, participating in making, or in any way attempting to use their positions to influence the decision in the proceeding.

- The applicant in, or subject, supporter or opponent of, a proceeding involving a license, permit or other entitlement for use from making a contribution of more than \$250 to any officer during the proceeding and for three months following the final decision.

Section 84308 requires:

- An officer who has received a contribution of more than \$250 from any applicant in, or subject, supporter or opponent of, a proceeding involving a license, permit or other entitlement for use to disclose the receipt of the contribution(s) on the record of the proceeding.
- The applicant in, or subject of, a proceeding involving a license, permit or other entitlement for use to disclose on the record of the proceeding any contribution of more than \$250 made within the preceding 12 months by the party or his or her agent.

The section provides that an officer will not be guilty of a violation unless he or she “willfully or knowingly received” the contribution, and allows an officer who has received a contribution to participate in the decision if he or she returns the contribution within 30 days of the time he or she knows or should have known about the contribution and the proceeding.

Analysis

As introduced, AB 2818 would have effectively exempted elected officials from the disclosure and disqualification requirements of section 84308. After the Chairman’s Subcommittee on Legislation voted to oppose the bill, it was amended to remove the exemption language and provide for indexing of the \$250 threshold for disqualification. The subcommittee also voted to oppose indexing the threshold on the basis that section 84308 is unique in the Political Reform Act in that it applies only where a *quid pro quo* is present.

Under section 83124, the Commission must adjust the contribution and voluntary expenditure limitations of sections 85301, 85302, 85303, and 85400 in January of every odd-numbered year to reflect changes in the Consumer Price Index. A similar provision appears in the gift limit at section 89503.

Unlike these sections, section 84308 involves only those situations where the contributor of a contribution is before the recipient official asking for a particular outcome in a governmental decision. On this basis, the Chairman’s Subcommittee on Legislation did not feel indexing would be appropriate.